

## Article 6.

### Compensation of Trustees and Other Fiduciaries.

#### **§ 32-53. Definitions.**

The following definitions apply in this Article:

- (1) Legal disability. – A person under a legal disability is a person who is a minor, incompetent, or unborn individual, or whose identity or location is unknown.
- (2) Qualified beneficiary. – As defined in G.S. 36C-1-103(15). With respect to a charitable trust defined in G.S. 36C-1-103(4), the term includes (i) a charitable organization described in G.S. 36C-1-110 as having the rights of a qualified beneficiary; or (ii) if there is no such charitable organization, the Attorney General.
- (3) Representative. – A person who may represent and bind another as provided in Article 3 of Chapter 36C of the General Statutes, the provisions of which shall apply for purposes of this Article.
- (4) Trust. – A trust to which Chapter 36C of the General Statutes applies as provided in G.S. 36C-1-102. (2004-139, s. 2; 2007-106, s. 38.)

#### **§ 32-54. Compensation of trustees.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee is entitled to receive from the assets of the trust compensation that is reasonable under the circumstances.

(b) All of the following factors shall be considered in determining reasonableness of compensation:

- (1) The degree of difficulty and novelty of the tasks required of the trustee.
- (2) The responsibilities and risks involved.
- (3) The amount and character of the trust assets.
- (4) The skill, experience, expertise, and facilities of the trustee.
- (5) The quality of the trustee's performance.
- (6) Comparable charges for similar services.
- (7) Time devoted to administering the trust.
- (8) Time constraints imposed upon the trustee in administering the trust.
- (9) Nature and costs of services delegated to others by the trustee.
- (10) Where more than one trustee is serving, the reasonableness of the total fees paid to all trustees.
- (11) Other factors which the trustee or the clerk of superior court deems to be relevant. (2004-139, s. 2.)

#### **§ 32-55. Notice.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee may, in the trustee's discretion, give written notice to all qualified beneficiaries of each proposed payment of compensation if the annual amount of compensation exceeds four-tenths of one percent ( $\frac{4}{10}$  of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year.

(b) In lieu of giving written notice of each proposed payment of compensation under subsection (a) of this section, the trustee may give written notice to all qualified

beneficiaries of the amount of compensation to be paid to the trustee on a periodic basis or of the method of computation of the compensation. The trustee shall not be required to give additional notice to the qualified beneficiaries unless the amount to be paid to the trustee on a periodic basis or the method of computation of the compensation changes.

(c) If a qualified beneficiary is under a legal disability, notice shall be given to the representative of the beneficiary. If a representative of a qualified beneficiary is not available without court order, notice shall be deemed given under this section if there is at least (i) one qualified beneficiary described in G.S. 36C-1-103(15)a. or b. who is not under a legal disability or a representative of a qualified beneficiary so described; and (ii) one qualified beneficiary described in G.S. 36C-1-103(15)c. who is not under a legal disability or a representative of a qualified beneficiary so described.

(c1) The notice provided for in this section shall contain a statement that the qualified beneficiaries or their representatives to whom the notice is given have 20 days from when notice is given to file a proceeding for review of the reasonableness of the compensation with the clerk of superior court in accordance with Article 2 of Chapter 36C of the General Statutes.

(d) The provisions of G.S. 36C-1-109 regarding notices to persons under Chapter 36C of the General Statutes shall apply for purposes of notices under this Article. (2004-139, s. 2; 2006-259, s. 13(m); 2007-106, s. 39; 2011-339, s. 1.)

#### **§ 32-56. Payment of compensation without court order.**

The trustee is authorized to pay the compensation provided for in G.S. 32-54 without prior approval of the clerk of superior court only if:

- (1) The annual amount of compensation does not exceed four-tenths of one percent (4/10 of 1%) of the principal value of the assets of the trust on the last day of the trust accounting year; or
- (2) Notice has been given pursuant to G.S. 32-55 and no qualified beneficiary or representative of a qualified beneficiary has initiated a proceeding under G.S. 32-57 for review of the reasonableness of the compensation within 20 days after notice has been given by the trustee in accordance with G.S. 32-55. (2004-139, s. 2; 2007-106, s. 40.)

#### **§ 32-57. Judicial review; payment of compensation and other payments with court order.**

(a) If the terms of the trust do not specify the trustee's compensation, the trustee or any qualified beneficiary, or representative of a qualified beneficiary, may initiate a proceeding under Article 2 of Chapter 36C of the General Statutes for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of the payment of compensation or expense reimbursement. A beneficiary may initiate a proceeding even though the 20-day period referred to in G.S. 32-56(2) has expired.

(b) In connection with reviewing the reasonableness of any compensation or expense reimbursement, the clerk of superior court may order the trustee to make appropriate refunds if the clerk determines upon review that a trustee has received excessive compensation or expense reimbursement. (2004-139, s. 2; 2006-259, s. 13(n); 2007-106, s. 41.)

**§ 32-58. Reimbursement for expenses incurred.**

In addition to the compensation referred to in G.S. 32-54, the trustee shall be entitled to reimbursement out of the assets of the trust for expenses properly incurred or advanced in the administration of the trust and shall be empowered to pay the expenses from the assets of the trust without prior approval of the clerk of superior court. The court may allow reimbursement of other expenses incurred or advanced to which the trustee is entitled in equity and good conscience. The trustee shall have a lien on trust property to secure reimbursement, with reasonable interest, of expenses owed under this section. (2004-139, s. 2; 2007-106, s. 42.)

**§ 32-59. Compensation of other fiduciaries.**

Unless otherwise provided by the General Statutes or by the instrument creating the fiduciary relationship, fiduciaries other than trustees under a trust shall be entitled, upon written request to the clerk of superior court, to reasonable compensation in an amount to be determined by the clerk after taking into consideration the factors set forth in G.S. 32-54(b) and to reimbursement for expenses properly incurred in the administration of the fiduciary relationship. (2004-139, s. 2.)

**§ 32-60. Effect of provisions in instrument.**

In those instances where the instrument creating the trust or other fiduciary relationship provides that the compensation of the fiduciary shall be the amount "provided by law", the "maximum amount provided by law", or other similar language, or references former G.S. 32-50, this language shall be construed as an intention that the trustee or other fiduciary shall receive reasonable compensation as allowed under this Article. In those instances where the instrument creating the trust or other fiduciary relationship provides that the trustee or other fiduciary shall serve without compensation, this language shall be construed as being a provision relating to compensation, and the trustee or other fiduciary shall not be entitled to receive reasonable compensation as allowed under this Article. (2004-139, s. 2.)

**§ 32-61. Counsel fees allowable to attorneys serving as fiduciaries.**

The clerk of superior court may exercise discretion to allow counsel fees to an attorney serving as a fiduciary or trustee (in addition to the compensation allowed to the attorney as a fiduciary or trustee) where the attorney, on behalf of the trust or fiduciary relationship, renders professional services as an attorney that are different from the services normally performed by a fiduciary or trustee and of a type which would reasonably justify the retention of legal counsel by a fiduciary or trustee who is not licensed to practice law. (2004-139, s. 2.)

**§ 32-62. Applicability.**

Regardless of when the trust or fiduciary relationship is created, the provisions of this Article shall apply to all payments made to a fiduciary after January 1, 2005, including payments for compensation earned prior to January 1, 2005. (2004-139, s. 2.)

**§ 32-63. Reserved for future codification purposes.**

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